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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8819 of 2007

Shri Balu Hari Deshmukh ...Petitioner
V/s.
The State of Maharashtra & anr. ...Respondents

Mr.S.A.Vaidya for the Petitioner

CORAM : B.H.MARLAPALLE,J.
DATED : 17th December, 2007

P.C.

Heard Mr.Vaidya, the Learned Counsel for the petitioner who had approached the Labour Court and filed comp(ULP) No.47/2002 praying for reinstatement in service. The said complaint was dismissed by the Labour Court as per its Judgement and order dated 17-5-2006. The Complainant,therefore, approached the Industrial Court at Pune and filed Revision Application (ULP) No.42/2006. The said Revision has also been dismissed as per the Judgement and order dated 10-1-2007 and hence this petition.

2. The Labour Court examined the evidence on record and noted that by the initial order dated 21-5-2000 at exh. 19, the Petitioner was appointed for a period of 90 days or till the candidate selected by the Selection Board would be available. The 2nd appointment order (at exh.23) was issued on 4-4-2001 for the post of junior clerk and the petitioner was appointed on a temporary basis but in a regular pay scale. As per clause-2 of the said appointment order dated 4-4-2001 it was made clear that the appointment was on temporary basis, he could be relieved from employment at any time and he was required to join within one month. The Petitioner joined on 23-4-2001 and on or about 8-2-2002 more than 50 persons engaged on temporary basis from different categories were discontinued by the Department. The Complainant, therefore, apprehended his termination and filed Comp(ULP) No. 47/2002. Initially he was protected but he was discontinued after the complaint was dismissed. Thus he was not in the employment in the Respondent Department of the State Government during the pendency of the revision application.

3. The appointment dated 4-4-2001 was issued by the Deputy Director of Health Services, Pune Region, Government of Maharashtra. Admittedly the Petitioner is

not one of those appointees who had gone through the regular selection process and came to be appointed against the permanent posts in the department of Health Services, Government of Maharashtra. On the other hand, he was a temporary appointee. It was brought before the Labour Court that on 3-3-2001 the Director of Health Services had issued written instructions to all the Deputy Directors that no appointment would be made in the quota reserved for freedom fighters and project affected persons without the consent of the Head office. On 18-2-2002 the Chief Administrative Officer from the Head Office at Mumbai had issued telephonic messages that all temporary employees including those appointed under the freedom fighter as well as project affected quota should be discontinued immediately. It was further pointed out in the oral depositions recorded before the Labour Court that vacancies in the post of junior clerk were reserved for ST and NT(D) categories, interviews were conducted for regular appointment on 8-11-2001 and final selection list was already prepared. As per the Rules, 25% of post were required to be filled in by promotion from the regular class-IV employees who had acquired qualifications for the post of junior clerks and remaining 75% were required to be filled in by nomination. On account of selection list prepared, the temporary appointees were likely to be discontinued.

Under these circumstances the Labour Court held that the apprehended termination of the petitioner's service would not amount to retrenchment and in any case he being a temporary employee did not have a vested right to be continued more so when regularly selected candidates were waiting for the appointment. The Petitioner was not one such regularly selected candidate. Consequently, there was no case made out by the petitioner to hold that the department would be guilty of any of the unfair labour practices on such contentions.

4. The Learned Member of the Industrial Court on considering the evidence, agreed with the reasoning set out by the Labour Court. He also noted that just because the Complainant had worked for more than 240 days continuously, there was no reason to believe that he had attained the status of permanent employee and in any case the proposed termination would be as per the condition of the appointment order. It would be covered by the exceptions under Section 2(oo)(bb) of the Industrial Disputes Act, 1947.

5. The concurrent views taken by both the Courts below, therefore, cannot be termed as perverse or

patently erroneous. Hence, there is no case made out to cause interference under Article 227 of the Constitution. Petition is rejected summarily.

[B.H.MARLAPALLE,J.]